Employment Development Department
State of California

Disability Insurance

Employer's Guide to

Voluntary Plan

Procedures

www.edd.ca.gov

The Employer's Guide to Voluntary Plan Procedures was designed to assist employers and their agents in the administration of approved voluntary plans. Comments, questions, or suggestions are welcome.

Information regarding voluntary plans may be obtained at the following:

Disability Insurance Customer Service
(916) 654-8198

Voluntary Plan Group
(916) 653-6839

Disability Insurance Website
http://www.edd.ca.gov/diind.htm

The EDD actively participates in the Voluntary Plan Advisory Group (VPAG). This group consists of VP employers, third-party administrators and DI Branch staff. The VPAG meets twice yearly to discuss VP issues and pending legislation, share common concerns, clarify VP claim procedures, and exchange ideas to improve the VP program. For information regarding joining the VPAG, contact the Voluntary Plan Group at (916) 653-6839.

In addition, the Voluntary Plan Group mails a yearly General Release Letter in the fall to all voluntary plan employers. The letter provides information and instructions regarding critical changes for the following year.

Copies of this publication may be requested from:

Voluntary Plan Group, MIC 29A
Employment Development Department
P.O. Box 826880
Sacramento, CA 94280-0001

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ACRONYMS

Following is a list of commonly used acronyms in this publication:

ALJ	Administrative Law Judge
CCR	California Code of Regulations, Title 22
CUIAB	California Unemployment Insurance Appeals Board
CUIC	California Unemployment Insurance Code
DI	Disability Insurance
EDD	Employment Development Department
ICD	International Classification of Diseases
IME	Independent Medical Examinations
MBA	Maximum Benefit Amount
PD	Permanent Disability
SDI	State Disability Insurance, also referred to as “state plan”
TD	Temporary Disability
VP	Voluntary Plan
WBA	Weekly Benefit Amount
WC	Workers’ Compensation

110 VOLUNTARY PLAN (VP) – DEFINITION

A voluntary plan is a private short-term disability coverage plan that an employer may offer to its California employees as a legal alternative to mandatory State Disability Insurance (SDI). This alternate plan to SDI (also referred to as the State plan) is provided for by the California Unemployment Insurance Code (CUIC). The Director of the State Employment Development Department (EDD) must approve a voluntary plan prior to its operation.

Employers and employee groups may establish a VP with mutual consent of the employer and a majority of the employees. An employee may choose SDI coverage even though a VP is available where he/she works.

Reference: CUIC Section 3254

120 PURPOSE OF THE DISABILITY PROGRAMS

The purpose of the SDI and VP programs is to compensate an individual, in part, for a wage loss due to sickness or an injury that is not work related. Both criteria (the wage loss and sickness/injury) must be met in order to establish entitlement to benefits. An individual is deemed disabled on any day in which, because of a physical or mental condition, he or she is unable to perform regular or customary work. Completion of a vocational rehabilitation plan establishes new regular or customary work in that occupation.

Reference: CUIC Sections 2601, 2626, and 2626(c)

130 LEGAL REQUIREMENTS

The CUIC requires the following:

- An individual covered by a VP will be afforded the same rights as if he/she were covered under the SDI Program.
- Each claimant must receive at least the same weekly benefit, maximum benefit amount and duration of benefits as if covered by SDI.
- The VP will provide at least one right or benefit that is greater than provided by SDI.
- The VP will amend its provisions to match any increase in rights or benefits that SDI implements as a result of legislation.
- The cost to the employee will not be greater than the cost for SDI.

Reference: CUIC Sections 3251 and 3254

140 ADMINISTRATIVE AUTHORITY

A VP may be more liberal in its provisions than SDI, but in no way may it be more restrictive. A VP cannot impose restrictions on eligibility that are not imposed by the State plan. The CUIC contains the laws that govern SDI, and grants the Director of the EDD the right to issue regulations interpreting the law. These regulations are contained in Title 22, *California Code of Regulations* (CCR).

150 CONDITIONS OF VOLUNTARY PLAN APPROVAL

A prospective VP employer must submit an *Application for Approval of Self-Insured Voluntary Plan of Disability Benefits*, DE 2520 BV, to the EDD, assuring that all necessary conditions are met. The DE 2520 BV may be obtained by calling SDI Customer Service at (916) 654-0453. Upon review and approval of the application, the EDD issues a *Notice of Conditional Approval* pending receipt of the security deposit.

In order for a voluntary plan to be approved by the EDD all of the following conditions must be met:

- The application for approval must be submitted prior to the requested implementation date.
- A majority of the employees eligible for coverage must give written approval to implement the VP.
- Covered employees may not be required to pay more for VP coverage than they would pay for SDI coverage.
- The rights and benefits provided by the VP must equal or exceed SDI in all respects.
- The VP must provide at least one right or benefit that is greater than provided by SDI.
- Employees who are eligible for coverage must be given the right to reject the VP and instead be covered by SDI.
- All covered employees must be given a written document that states their rights and benefits under the VP.
- The employer must post a security deposit with the EDD to guarantee that it meets all obligations of the VP.

150 cont.

- The VP coverage must be offered to all California employees of the employer. Following are allowed exclusions:
  - Part-time employees who work less than half of the employer's standard workweek.
  - Short-term employees who are hired for an expected duration of two weeks or less.
  - All employees in one or more geographic employment location.

Reference: CUIC Section 3254

160 CLAIM FORMS

Although the CUIC requires that a claim for SDI benefits be submitted on a specified form, the VP employer has flexibility in how a claim for benefits can be established. An actual claim form is not necessary, but the reporting information required by the EDD and medical certification must be obtained in some manner.

Some employers choose to fashion a form after the SDI claim form. A *Claim for SDI Benefits*, DE 2501, may be obtained as follows:

- via the Internet at http://www.edd.ca.gov/dipub.htm, or
- by calling SDI Customer Service at (916) 654-0453.

The Doctor's license number will be required if the employer requests verification of credentials from the State. VPs may provide that a phone call to the supervisor constitutes a claim for benefits. In those cases, all such calls must be documented and properly handled as a claim. Once a claim is received in whatever manner required by the VP, the employer becomes liable for proper handling of that claim. Any denial of benefits must be sent in writing and must state that the denial is final unless an appeal is filed in writing within 20 days. In addition, a clear and concise reason for the denial and a reference to the section of the plan on which the denial was based must also be included.

Reference: CUIC Sections 2706, 2707.2, and 2707.4

170 RELEASE OF INFORMATION

The SDI claim form advises claimants that SDI records are available to other governmental entities. Similarly, the reported information required on VP claims becomes part of State records and subject to release. Employers should, likewise, inform their claimants of this possibility.

Reference: CUIC Sections 1095 and 2714

210 DETERMINING LIABILITY: VP OR SDI

The initial determination that must be made is whether the VP or SDI is liable to insure the employee. Company records should indicate which coverage the employee has selected.

VP coverage may begin on the date that the employee elects to be covered by the VP rather than SDI. On the other hand, the employee may be required to work for the company for a specific period of time before coverage becomes effective. In these situations, SDI will cover the employee.

When the VP automatically covers all employees, a signed rejection slip must be on file for any employee who chooses to be covered by SDI. If automatic coverage is not in effect, a sign-up sheet or other documentation must confirm each employee's coverage choice.

Determination of liability must be based on the date that:

- the disability began, or
- the condition reached a degree that the claimant was unable to perform regular or customary work.

This date may be different from the stated claim date or the first day that the claimant is entitled to receive benefits. While accidents establish a clear beginning of the disability, chronic conditions may require investigation. Personnel records, attendance information and discussion with the supervisor may be necessary to determine when the condition became disabling. A medical condition may exist for some time and not prevent a person from doing regular or customary work. That same condition may then worsen to a degree that constitutes "disability" under the law and entitles the individual to disability benefits.

Liability for coverage must be determined before a decision can be made regarding eligibility for benefits.

If the disability occurred:

- after the employer/employee relationship terminated, or
- after the completion of the 15th day of a layoff without pay, or,
- after the completion of the 15th day of a leave of absence without pay,

VP coverage has ceased, unless the VP text states otherwise.

Reference: CUIC Section 3257; Title 22, CCR, Section 3254-3 (a) (6)

215 VOLUNTARY PLAN LIABILITY AFTER JOB TERMINATION

Generally, VP coverage ends at midnight on the day of employment termination.

EXAMPLE: An employee is fired and is injured in an auto accident before midnight that day on the way home. This employee is covered under the VP.

The VP is also liable in the following situations:

- When a disabling condition precedes the termination or begins before the end of coverage.

- When an individual continues working in order to finish a job or train a replacement, even though a disabling condition has commenced.

- When an employee resigns a position because of a disability rather than request a medical leave, even if the actual reason for the resignation is not disclosed to the employer.

Reference: Title 22, CCR, Section 3254-3 (a) (5)

220 DISPUTED COVERAGE PROCESS

When there is a dispute whether benefits are payable from the SDI plan or from one or another voluntary plan(s), benefits must be paid from the plan against which the claim was first filed.

Two levels of arbitration exist to settle any disagreement:

- A hearing before an Administrative Law Judge (ALJ).

- Review by the California Unemployment Insurance Appeals Board (CUIAB).

The dispute of coverage is unrelated to the question of the claimant's eligibility for benefits. "Disputed coverage" determines only whether SDI or the VP is liable to insure the individual. It does not presume that benefits must be paid. The plan that accepts liability, either directly or by default, then determines whether or not the claimant meets eligibility criteria for disability benefits.

Reference: CUIC Section 2712

230 DISPUTED COVERAGE REFERRALS TO SDI

If a VP believes that SDI is liable for a claim originally filed with the VP, a copy of that claim should be referred to an SDI field office. For a current list of contacts in SDI field offices, refer to the fall General Release Letter or call the VPG at (916) 653-6839.

The referral should include the following information:

- Medical certification, which consists of:
  - the diagnosis, or where no diagnosis has yet been established, a detailed statement of symptoms
  - the International Classification of Diseases (ICD) code
  - the certifying physician or practitioner's original signature and license number
- the employee's occupation,
- whether or not VP benefits were paid, and if so, the dollar amount and the period that was paid,
- a clear explanation of why SDI should accept liability for the claim,
- any other pertinent information that would assist in determining liability of coverage, and
- the name and direct telephone number of the employer representative handling the claim.

NOTE: Claims referred to SDI must contain an original signature for medical certification. A stamped signature is not acceptable. Before sending a copy of the claim to the SDI office, the VP must secure an original signature either on the initial claim form, on a new claim form, or on a separate statement from the physician or practitioner.

The VP must allow the SDI office 25 days from the date of referral to respond. A copy of the referral letter must be sent to the claimant.

Reference: Title 22, CCR, Section 2712-2

231 ACTION AFTER STATE RESPONSE

If SDI accepts coverage, the field office will respond in writing and begin payment on the claim, provided the claimant is otherwise eligible. If SDI does not accept coverage or does not respond within the specified time, the employer must make a determination of eligibility and, if appropriate, begin immediate payment of the claim at no less than the State award rate. Review the claim to determine if a disputed coverage appeal will be filed. The VP has 30 days from the date of SDI denial or 30 days from the deadline for SDI's response to file an appeal.

232 FILING A DISPUTED COVERAGE APPEAL

To file a disputed coverage appeal, complete *Appeal to an Administrative Law Judge for Determination of Coverage*, DE 1000DC, in duplicate. The DE 1000DC may be obtained from any SDI field office. For a current list of contacts in SDI field offices, see the fall General Release Letter or call the VPG at (916) 653-6839. Include a brief factual statement of why SDI should accept coverage, attach a copy of the SDI denial letter, and send the appeal to the appropriate Office of Appeals. For information on the appropriate Office of Appeals for your area, call SDI Customer Service at (916) 654-0453.

240 RECEIPT OF A DISPUTED COVERAGE REFERRAL

When SDI receives a claim that is determined to be the responsibility of a VP, a *Full Coverage Referral to Voluntary Plan*, DE 5022, will be sent to the VP, in duplicate. Unless prohibited by confidentiality laws, a copy of the SDI claim form, SDI benefit rate information, and other pertinent information will be attached. If SDI paid benefits on the claim, the payment period and total amount paid will also be provided on the referral. The VP is allowed 25 days from the date of mailing to respond to the referral. The investigation needed to determine coverage liability should be conducted promptly to ensure a response is provided to SDI within the 25-day period.

A response, either accepting or denying liability must be returned to the SDI office that referred the claim. Failure to respond by the deadline constitutes a denial and will result in SDI paying the claim and possibly filing an appeal.

If the VP accepts liability, it should respond to SDI on the DE 5022. Payments to the claimant should begin immediately, if otherwise eligible. The VP must promptly reimburse SDI if benefits were paid on the claim.

If the VP denies liability, a clear explanation of the reason must be provided. Communication with the SDI examiner who sent the referral notice may provide clarity and avert an appeal. If coverage is denied, a copy of the denial letter must be sent to the claimant and must contain a statement of appeal rights. The claimant has 20 days and SDI has 30 days, from the date of denial to appeal the decision.

Reference: Title 22, CCR, Sections 2712-2 and 5021

310 WHO MAY CERTIFY

Except as described under Other Options for Certification below, California law states that SDI benefits will be paid with medical certification from a treating medical or osteopathic physician, surgeon, optometrist, dentist, osteopath, chiropractor, podiatrist, or psychologist acting within the scope of his/her practice. Nurse-midwives and nurse practitioners may certify to normal pregnancy and childbirth-related disabilities.

Reference: CUIC Section 2708

311 OTHER OPTIONS FOR CERTIFICATION

A claimant who is hospitalized or under the care of any U.S. Government medical facility may submit a certificate signed by an authorized medical officer of that facility, provided that the disability is shown on the claimant's hospital chart. A claimant who is hospitalized in or by authority of a California county hospital may submit a certificate signed by the registrar of that facility, provided that the disability is shown on the claimant's hospital chart. A religious practitioner who is duly authorized and accredited by a bona fide church, sect, denomination, or organization may certify to a disability and provide an estimated duration. SDI maintains a list of accredited religious practitioners. See Section 320, if verification is needed.

A certificate is not necessary if the employee submits evidence of receipt of temporary Workers' Compensation benefits. If the amount of these benefits is less than the VP amount, the VP must pay the difference.

Reference: CUIC Sections 2708 (d) and 2709

320 VERIFICATION OF LICENSE

At times, it may be necessary to verify the medical certifier's credentials. When verification is needed, send a written request to:

State Disability Insurance
P. O. Box 826880, MIC 29B
Sacramento, CA 94280-0001
Attn: Doctor Verification

The verification request must contain the complete name, address, license number, and phone number of the individual in question. If the information is on file in Sacramento, a response will be sent within two weeks. If the individual has not been previously verified and placed on the approved list, investigation will be necessary. The length of this process varies, depending on the nature of the investigation. Information from foreign countries may take up to a year. The VP may suggest that the claimant obtain medical certification from an accredited physician in order to expedite disability benefit payments.

320 cont. SDI is authorized to suspend processing claims from foreign doctors who are under investigation for filing false claims when SDI does not have legal remedies to conduct a criminal investigation or prosecution in the foreign country. A foreign doctor who has been convicted of filing false claims with SDI may not file a certificate in support of a new or existing claim for disability benefits for a period of five years from the date of conviction.

Reference: CUIC Section 2708 (b)

330 MEDICAL CLARIFICATION ON NEW CLAIMS

An initial claim for benefits must be supported by medical certification which includes:

- a diagnosis, or where no diagnosis has yet been obtained, a detailed statement of symptoms,
- a diagnostic code prescribed in the International Classification of Diseases (ICD), and
- a statement of medical facts including secondary diagnoses, when applicable.

When initially completing the claim form, the physician or practitioner must provide a return-to-work date, even if it is only an estimate. The claimant must inform the VP if he/she is able to return to work at an earlier date in order to prevent an overpayment of benefits.

Reference: CUIC Section 2708 (a)

340 EXTENDED MEDICAL INFORMATION

The recovery/return-to-work date presented in the initial medical certification may be extended. The VP must include a notice with the final benefit check, identifying it as the last payment unless further medical certification of disability is furnished. The claimant, by law, has 20 days to submit an extension. The requirements for a medical extension are the same as for a new claim, in terms of who may certify and the information required. If the continued medical information is postmarked beyond 20 days from the request date or notice of final payment, a disqualification may be issued for those days affected by the lateness. The disqualification may be waived for good cause. See Claims Filed Late, Section 440, for more information.

Reference: CUIC Section 2708

350 APPROVED TREATMENT FACILITIES

If the claimant has been referred by certified medical authority and participates as a resident either in an approved alcoholic recovery home or drug-free residential facility, it is not necessary that he/she be certified as disabled. However, certification of referral to the residential facility is necessary. The State Department of Alcohol and Drug Programs must approve the alcoholic recovery home or drug-free residential facility. In these cases, the duration of benefit payments is limited. For example, 30 days of initial benefits are allowed for treatment in an approved alcoholic recovery home, and may be extended up to 60 additional days, for a total of 90 payable days. Forty-five days of initial benefits are allowed in a drug-free facility, and may be extended up to 45 additional days, for a total of 90 payable days. SDI maintains a list of approved facilities. Verification of approved alcoholic recovery homes or drug-free residential facilities may be requested in writing by providing the facility name and address to the EDD at the address provided in Section 320.

Reference: CUIC Sections 2626.1 and 2626.2

SDI may return information that a facility is not currently approved. In this case, the VP may request SDI to notify the facility that the State Department of Alcohol and Drug Programs states that the facility's program is not certified. SDI will inform the facility how to request approval from the Department of Alcohol and Drug Programs.

Claims submitted from unapproved facilities are not payable. However, if other medical information indicates that the claimant is following a prescribed course of treatment, the claimant is eligible for benefits. A prescribed course of treatment may include therapy under the direct medical supervision of a physician, whether in or out of a hospital setting. Visits with a physician for purposes of evaluation alone do not constitute medical treatment.

410 PROVISIONS AND LIMITATIONS

The provisions and exclusions of State Disability Insurance (SDI) are contained in the California Unemployment Insurance Code (CUIC) and Title 22, California Code of Regulations (CCR). Except where clearly provided otherwise, the rights of individuals who receive SDI benefits are equally applicable to those who receive voluntary plan (VP) benefits. A VP may not be more restrictive than SDI, however it may be more liberal. The provisions by which a VP will provide more liberal eligibility requirements must be clearly stated in the plan text.

Reference: CUIC Section 3251; Title 22, CCR Sections 3251-1 (c) and 3254-1(c)

The following standards for disability insurance claims represent the minimum requirements that must be met by a VP. Except for Benefit Redirection, these standards also apply to SDI claims. Where the VP has more liberal provisions, the specific provisions of the VP text apply and must be followed.

411 BENEFIT REDIRECTION

VP claimants may choose to have a portion of their VP benefits redirected to pay or reimburse all or a part of the cost of their employee-paid benefits. Claimants are not required to have benefits redirected. The redirection of VP benefits may be made at the time the individual applies for VP benefits or at any time the individual is receiving benefits.

The claimant may terminate or change the redirection of benefits at any time. Disability benefit payments may not be delayed because an individual elects to redirect a portion of his or her benefits.

The individual request must be in writing and must specify the weekly amount of VP benefits to be directed to the employee-paid benefit(s).

The authorization form must allow the individual to:

- authorize in writing the weekly amount of VP benefits to be redirected for the payment of the employee-paid benefit, and

- terminate or change the terms of the voluntary redirection of benefits at any time. If the individual is legally declared incompetent, the spouse of the employee, in the absence of any other legally authorized representative, has the right to continue or cancel the authorization.

Reference: CUIC Section 1345

412 PAYMENT OR DENIAL OF BENEFITS

If a claimant is determined eligible for benefits, he/she should be paid within 14 days of receipt of a properly completed claim. If an employer denies benefits in whole or in part on a claim, a notice must be provided to the claimant. A copy of the required notice must also be promptly provided to SDI.

The notice to the claimant must include information on appeal rights and a copy of the disqualification must be attached to the follow-up copy of the *Report of Voluntary Plan Claim*, DE 2523, when it is submitted to SDI. A claimant may assume that unreasonable delay in payment is a denial of benefits and may request a hearing before an Administrative Law Judge (ALJ).

Reference: CUIC Sections 2701.5 and 3264; Title 22, CCR Section 3267-1

413 DENIAL OF BENEFITS

Although a claimant may have a disabling condition that prevents him/her from doing regular or customary work, he/she may not be eligible for benefits for some or all days of the disability period. The allowable reasons and the legal references for benefit disqualification include, but are not limited to the following:

- late filing of the initial or continued claim,

  Reference: CUIC Sections 2706.1 and 2706.2; Title 22, CCR Section 2706-3

- not being under the care and treatment of a physician during some days for which benefits are claimed, although regulations allow payment of benefits for up to seven days prior to the first day of care and treatment,

  Reference: CUIC Section 2708; Title 22, CCR Section 2706-1

- receiving full wages,

  Reference: CUIC Section 2656

- receiving Workers' Compensation benefits in an amount greater than the disability benefit entitlement, and

  Reference: CUIC Section 2629

- incarceration as the result of a criminal conviction or being disabled as a result of the commission of, arrest, investigation, or prosecution of a crime that results in a felony conviction.

  Reference: CUIC Sections 2680 and 2681

413 cont. A claimant may not be eligible for a portion of benefits if the wage loss incurred is less than the benefit amount. In these situations the employee is entitled to benefits equal to the wage loss. Allowable reasons for partial benefit disqualification include:

- light or limited work, at less than the regular weekly wage,
- part-time return to work, at less than the regular weekly wage,
- sick leave pay at less than the regular weekly wage, and
- receipt of temporary or permanent Workers' Compensation benefits at less than the disability benefit entitlement.

When VP benefits are disallowed in whole or in part, a written notice of disqualification must be sent to the claimant. The written notice must include:

- the dates for which benefits were disqualified,
- an explanation of why benefits were disqualified for those dates, and
- information advising the claimant of the right to appeal the disqualification.

If and when the period and reason for disqualification ends, benefit payments must be continued at the weekly and maximum amount allowed by the plan, provided all other eligibility criteria are met.

Reference: CUIC Section 2656

414 PREGNANCY

Claims due to or related to pregnancy, before and/or after delivery, are subject to the same laws and regulations as other disability claims. There is no required or prescribed duration for such claims. All the requirements previously stated for medical certification, disability from regular or customary employment, and wage loss are applicable.

Reference: CUIC Section 2626

415 INDEPENDENT MEDICAL EXAMINATION (IME)

The VP has the right to require additional medical information to verify medical eligibility for continued benefits, including requiring an IME. The VP is responsible for the cost of the exam and any related tests. IME requests are governed by the following general principles:

- The request for an examination must be reasonable.
- The IME physician must be directed to submit an independent and impartial opinion.
- The IME and any lab work or x-ray's should only be extensive enough to determine the claimant's ability or inability to perform regular or customary work. The IME physician must also provide an estimated date of return to work, if applicable.

Any claimant who fails to submit to a reasonable IME is subject to disqualification. **Exception:** Residents of alcohol recovery homes or drug-free residential facilities and individuals who depend entirely upon prayer or spiritual means for healing are not required to submit to an IME.

VP employers must adhere to the following guidelines when administering IMEs:

- If a claimant fails to contact the IME physician within the time prescribed, he/she is disqualified from receiving disability benefits beginning on the eighth day after the date the IME request was mailed to the claimant.
- If a claimant schedules an IME but fails to report or cancels the appointment, he/she is disqualified from receiving benefits beginning with the date of the IME, or the date of the cancellation, whichever is earlier.
- If a claimant initially fails to comply with the request for an IME but later agrees to submit to one, the disqualification ends on the day before the examination was performed.

Upon receipt of the independent medical examiner's report, the VP must determine a claimant's eligibility for disability using the following criteria:

- If the IME doctor confirms or extends the treating physician's original estimated recovery date, the VP may use the treating physician's original recovery date.
- If the IME doctor confirms disability on the date of the IME but states the claimant may be able to return to work sooner than the claimant's physician stated, the VP must pay at least to the IME doctor's estimated recovery date. Additional medical evidence may be requested from the claimant's physician to support payment of benefits beyond that date.

415 cont.

- If the IME doctor states the claimant is able to perform his/her regular or customary work on the date of the IME, the VP must review all available medical information and determine the claimant's eligibility for disability benefits. If the VP determines the claimant is able to perform his or her regular or customary work on the date of the IME, disqualification of benefits begins on that date.

Reference: CUIC Section 2627 (c); Title 22, CCR Section 2627 (c)-1

420 CLAIMANT RIGHT TO APPEAL A DENIAL OF BENEFITS

When a claimant is denied any or all benefits, he/she must be informed of the right to appeal in the manner prescribed by the CUIC. To appeal a denial of benefits, the claimant must send a letter to any SDI field office postmarked no more than 20 days from the date of the notice of denial of benefits. The letter should include the following:

- the claimant's name,
- the claimant's signature,
- the claimant's social security number, and
- the reason for appealing the decision.

The SDI office will complete the required forms and forward them to the appropriate Office of Appeals.

Reference: CUIC Section 2707.2

421 GIVING EFFECT TO AN ALJ OR CUIAB DECISION

When an administrative law judge (ALJ) or the California Unemployment Insurance Appeals Board (CUIAB) decides that a claimant is entitled to benefits, the VP must pay disability benefits within 15 days of the mailing of that notice of decision.

The VP's right to appeal an ALJ decision to the CUIAB does not override the effect of the ALJ decision. Benefits must be paid timely pending the decision of the CUIAB.

Reference: CUIC Section 3265 (a)

422 PAYMENT OF BENEFITS PENDING APPEAL

In some circumstances payment of benefits is required pending the outcome of an ALJ appeal. If a claimant is initially determined eligible for and is paid benefits and is subsequently disqualified or has benefits reduced, he/she may elect to continue receiving full benefits pending the outcome of the appeal if he/she:

- files a timely appeal to an ALJ; and
- submits a signed promise to the VP to repay benefits if an ALJ rules the claimant was not entitled; and
- files continued claims pending the ALJ decision, and
- is otherwise eligible to receive benefits.

Reference: Title 22, CCR Section 2706-5

430 CALCULATION OF STATE PLAN AWARD

The state plan weekly benefit amount (WBA) and maximum benefit amount (MBA) are based on wages paid to the claimant during a 12-month base period. Only wages subject to the disability insurance tax can be considered, and those wages must total at least $300 during the 12 consecutive months under consideration.

Exceptions:

- If a claimant earned less than $300 in the base period, and the claim begins during an Unemployment Insurance (UI) Benefit Year, the UI base period may be substituted.
- If the claimant served in the military, received Workers' Compensation benefits, or did not work because of a trade dispute during the base period, prior wages may be substituted to increase the benefit.
- A person who is determined ineligible for any benefit amount because of extended unemployment may also be able to substitute prior wages to establish a benefit amount.

Reference: CUIC Sections 2611 (b), 2612, 2652, 2658, 2776, and 2777

Qualifying wages from all employers during the base period are considered in the calculation of the WBA. Base period wages need not include wages from the current employer in order to qualify for benefits, i.e., wages do not need to be strictly VP employer wages to be qualifying wages for VP disability benefits.

430 cont. The MBA is 52 times the WBA, but not more than the total wages earned during the base period.

The base period is determined by the effective date of the claim as follows:

If the claim begins in:	The base period is the 12 months ending the previous:
Jan-Feb-Mar	September 30
Apr-May-Jun	December 31
Jul-Aug-Sep	March 31
Oct-Nov-Dec	June 30

Reference: CUIC Sections 2610, 2655(c), and 2655(d)

Contact SDI by telephone at 1-800-480-3287 or via the Internet at www.edd.ca.gov/diind.htm for the current weekly benefit amounts.

435 CLAIMANT RIGHT TO RECOMPUTATION

When an SDI field office receives a *Report of Voluntary Plan Claim*, DE 2523, the basic information is entered into the State computer system, which mails a *Notice of Computation*, DE 429D, to the claimant. The claimant should review and verify the wages used to compute the SDI award. If one of the exceptions listed in section 430 exists, the claimant has the right to request a recomputation of benefits from the SDI office. Since the VP benefit must meet or exceed the SDI award in all cases, this recomputation may affect the VP benefit.

There may also be wage errors or omissions on the DE 429D. Wages may have been reported but credited to an incorrect social security account number. Once again, it is the claimant's responsibility to contact the nearest SDI office to submit wage verification and to request a recomputation.

Reference: CUIC Sections 2707.3 and 2707.4; Title 22, CCR 3254-1(a)

440 CLAIMS FILED LATE

The CUIC considers a claim timely if it is filed within 41 days from the first compensable day. Therefore, by including the seven-day waiting period, SDI allows 49 days from the date of disability for a timely claim, using the postmark date as the reference point. If the VP allows a longer time for filing a timely claim, the plan text must contain information on the criteria for timeliness.

If a claim is postmarked beyond the allowable time, the claim date is adjusted and benefits are denied or suspended for the duration of lateness. Benefits are then payable from the adjusted claim date.

EXAMPLE: The disability began on March 1 and the claim form is postmarked June 1. Since the timely filing period is 49 days, this claim is timely through April 18. Late filing is calculated for the period April 19 through June 1, 44 days. The claim date is adjusted by disallowing 44 days from March 1 to April 13. The adjusted claim date is April 14. The waiting period is April 14 through April 20, and benefits are paid beginning April 21. Benefits cease when the claimant recovers, is released to return to work or when the maximum benefits, as described in the VP text, are exhausted.

Reference: CUIC Section 2706.1

450 OVERLAPPING DISABILITIES

Disability benefits payable to an employee covered by a VP, are the continuing liability of the VP, regardless of any subsequent disabling condition occurring during the same disability benefit period. Once a valid claim is established, the benefit period is extended by any additional disabling conditions that occur before the claimant is released to return to work for the initial condition.

EXAMPLE: Disability #1 began April 1 and is expected to continue until July 1. Disability # 2 began on June 1 and is expected to continue until December 1. Benefits are payable under the VP from April 1 thru November 30 for a single "disability benefit period."

Reference: CUIC Section 3253

460 CALCULATION OF BENEFITS FOR A PARTIAL WEEK

When benefits are paid for a partial week, the calculation must conform to the statement in the VP text. SDI pays one-seventh of the weekly benefit amount for each day of disability. This means that the claimant may be paid for days of the week not usually worked; e.g., weekends. It also means that the claim and benefits may begin on a day that the claimant would not have been scheduled to work; e.g., Saturday or Sunday. If a VP calculates benefits on a five-day week, a comparison to the SDI computation must be done to insure the adequacy of benefit amounts.

Reference: CUIC Section 2656

470 DEFINITION OF WAGES

"Wages" include the following types of payments, and may conflict with disability benefits when allocated to a period of disability:

- Earnings for part-time or light-duty work
- Sick pay
- Holiday pay
- Back pay
- Bonus
- Commission payments
- In-lieu-of-notice pay
- Money awarded by the Fair Employment Practices Commission in-lieu-of-wages for a specified period
- Return payments
- Retroactive wages
- Military compensation

Exceptions:

- Sick pay and/or holiday pay is not considered to be "wages" for benefit purposes when payment is made because of a termination of employment.
- Holiday pay is not considered to be "wages" when paid after the commencement of a disability.
- The Supreme Court has ruled that dismissal and severance payments of any kind, by whatever name, are not wages for any purpose relating to disability benefits.
- Vacation pay is never considered wages for benefit purposes.

Reference: CUIC Sections 1265.6 and 2656

471 CALCULATION OF BENEFITS WHEN RECEIVING WAGES

Receipt of wages, earned or not earned, may not always preclude payment of disability benefits. Benefits are paid to compensate for a wage loss due to a disability. When a wage loss is identified, and all other eligibility requirements are met, the individual is eligible for disability benefits. However, the disability benefit amount will be reduced if the amount of wages paid plus the disability benefit exceed the individual's regular wage immediately prior to the commencement of the disability, exclusive of wages paid for overtime work. Vacation pay is disregarded when calculating disability benefit entitlement.

EXAMPLES: The claimant's regular wage prior to disability was $450 per week. The maximum weekly benefit entitlement under the VP is $250 per week.

#1 The claimant is unable to work and is not paid any wages by the employer. The claimant is eligible for $250 per week in VP benefits, the maximum entitlement.

#2 The claimant is released by the treating doctor to return to work half time, earning $225 in wages per week. The claimant suffers a $225 per week wage loss, and is eligible for $225 per week in VP benefits, the amount equal to the wage loss.

#3 The claimant is released by the treating physician to return to work fifteen hours per week, earning $169 in wages per week. The claimant suffers a $281 per week wage loss and is eligible for $250 per week in VP benefits, the maximum entitlement.

	Example #1	Example #2	Example #3
Regular Wage =	$450	$450	$450
Partial Wage =	-0	-225	-169
Wage Loss =	$450	$225	$281
VP Benefit =	$250	$225	$250

The claimant is paid the calculated maximum VP benefit amount, **or** the amount of the wage loss, whichever is less. This calculation uses the weekly wage loss and weekly benefit entitlement to integrate benefits with wages. Benefits calculated for partial weeks must use one-seventh or one-fifth the wage and benefit amount as specified in the VP text.

The wages may be paid by the VP employer paying disability benefits, or by a different employer. Claimants may be released by the doctor to return to light work, part-time work, or less than "regular or customary work." The claimant may also seek work with another employer doing less than regular or customary work and still suffer a wage loss from the regular or customary work. In this case, the claimant must submit a record of wages to the VP paying benefits so that benefit entitlement may be calculated.

Reference: CUIC Sections 140.5 and 2656

480 SIMULTANEOUS COVERAGE

An individual with more than one employer may be simultaneously covered by more than one plan. This may be a combination of SDI and VP coverage. For SDI to be a party to "simultaneous coverage," the claimant must have a valid SDI award and be otherwise eligible for disability benefits. **Note:** SDI counts as only one plan regardless of the number of SDI employers for which the claimant works.

EXAMPLES:

- The claimant has three employers at the time of disability, two SDI and one VP. SDI would pay half of the SDI rate; the VP would pay half of the SDI rate, plus the difference (if any) between the SDI and the VP rates.

- The claimant works for two VP employers and one SDI employer. SDI would pay one-third of the SDI rate; each VP would pay one-third of the SDI rate, plus the difference (if any) between the SDI and the VP rates.

- The claimant works for one VP and one SDI employer. The claimant has only worked for the VP employer for four months and for the SDI employer for one month. The claimant has no prior California earnings, and therefore has an invalid award with SDI and will not receive SDI benefits. However, if the provisions of the VP allow immediate coverage based upon current earnings and not the typical base period earnings, the VP would be liable for the entire payment of benefits.

- If the claimant works for a VP employer and an exempt employer, such as the federal government, SDI is liable for one-half of the SDI rate.

A disability may prevent the claimant from performing his/her regular or customary work for one or all of the employers. Conversely, the disabling condition may not necessarily affect all jobs. Only the coverage of the employment affected by the disability is liable for payment of benefits.

When an SDI office receives a claim and suspects that simultaneous coverage may exist with a VP, a referral similar to a disputed coverage referral is forwarded to the VP. The referral will note that the issue is simultaneous coverage, but in all other respects, the procedure is the same as a disputed coverage referral. The VP may also gain knowledge of potential simultaneous coverage from information supplied by the claimant. The VP claim form, therefore, should ask the claimant the following:

- If he/she was working for another employer at the time of disability,

- If he/she is disabled from this other job, and

- If that employer has a voluntary plan.

480 cont. If the other employment involves SDI coverage, a referral procedure similar to the disputed coverage referral should be used and should request acceptance of simultaneous coverage. If the other employer has a VP, the simultaneous coverage referral must be sent directly to that plan.

If it is agreed that more than one plan is liable for payment, each liable plan must pay an equal share of the SDI benefit rate. Each VP that is liable for payment must also pay the difference between the full SDI weekly award rate and their full VP weekly rate, as described in the plan text.

If the claimant is later able to return to one, but not all jobs, the payment liability changes. Only the coverage for the employment from which the claimant continues to be disabled remains liable for payment. Liability increases in proportion to the number of remaining plan(s). If only one plan remains liable, it must pay 100 percent of the benefit rate.

Reference: CUIC Section 3253; Title 22, CCR 3253-1

481 CALCULATING SIMULTANEOUS COVERAGE BENEFITS

In this example the claimant has two employers; one employer has a VP, the other has SDI. The claimant is disabled from both jobs and simultaneous coverage is agreed upon by both the VP and SDI:

- Employer "A" is covered by a VP that pays 70 percent of net salary, which equals $400 per week.
- Employer "B" is covered by SDI, which pays $224 per week.

	Weekly Benefit Award	Simultaneous Coverage Liability	Claimant Receives
Employer A (VP)	70% of net salary = $400	½ of SDI WBA (224÷2) = 112 **plus** VP rate - SDI WBA (400-224) = 176	**$288** from VP
Employer B (SDI)	SDI WBA = $224	½ of SDI WBA (224÷2) = 112	**$112** From SDI
		Claimant's Total Weekly Benefit	**$400**

490 SUPPORT INTERCEPT DEDUCTIONS

The VP is required to make deductions from benefits that are payable to individuals identified by the California Department of Social Services as having unmet spousal and/or child support obligations. The California Department of Social Services notifies SDI of individuals who have delinquent support obligations and/or subsequent changes in the obligation. This information is matched against VP claims for which SDI has received a *Report of Voluntary Plan Claim*, DE 2523. Using the disputed coverage referral address, SDI notifies the VP of the action that must be taken beginning with the next benefit check issued to the claimant.

The notification may provide information regarding:

- an initial support obligation;
- a change in the county responsible for enforcing a support obligation;
- a change in the withholding percentage, or
- a cessation of the support obligation.

The notification will provide the name, address and phone number of the county responsible for enforcing the support obligation. The amount withheld is a specified percentage up to 25 percent, and is calculated on the net entitlement including any benefits redirected, rounded down to the next whole dollar. The VP employer may retain up to $2 for actual administration costs from the amount withheld. The amount withheld is mailed directly to the district attorney's office in the county responsible for the support obligation.

Before or with the first reduced benefit payment, the claimant must be notified of the reason for the reduction, the right to appeal the benefit reduction, and the name, address, and phone number of the County Department of Child Support Services office where the withheld amount will be sent. The claimant should address questions concerning the support obligation to the Department of Child Support Services. The claimant may file a timely appeal within 20 days of the date of the employer notice by contacting an SDI field office.

Pending the appeal decision, the support intercept process continues. If the appeal decision rules in favor of the claimant, the county is responsible for refunding money to the claimant, if appropriate.

Deductions made per an *Order Assigning Salary or Wages* to satisfy judgments for child support must cease when notification of support obligation is received from SDI. In addition, once withholdings have begun as the result of notification from the EDD, any new *Orders Assigning Salary or Wages* received must be returned to the judgment creditor.

490 cont. In each case, an explanation should be provided to the judgment creditor as follows:

> "As a result of changes in the law, disability insurance benefits are no longer subject to withholding in satisfaction of *Orders Assigning Salary or Wages*. Section 704.120 of the California Code of Civil Procedure now permits benefits to be intercepted only when requested by a county support enforcement agency in accordance with California Unemployment Insurance Code Section 2630 and Welfare and Institutions Code Section 11350.5."

The employer must total the intercepted amount and report it on the close-out copy of the *Report of Voluntary Plan Claim*, DE 2523, in box #14. Any amount withheld to satisfy support obligations is treated as if it were paid directly to the individual as VP benefits.

Reference: CUIC Section 2630

510 REPORT OF A VOLUNTARY PLAN CLAIM, DE 2523

Voluntary plan employers use the *Report of a Voluntary Plan Claim*, DE 2523, to report the filing and termination of a VP claim. This form is also used to request award information from SDI offices for any claimant whose VP benefit is calculated at less than the SDI maximum. See Request for State Award, Section 515, for more information.

Employers are required to notify EDD within 15 days after receipt of a claim for disability benefits using a DE 2523. A final DE 2523 report must be submitted within 35 days after final payment is made for each period of disability. Both the initial and final report must be submitted to the same SDI field office. Do not send DE2523s to the Voluntary Plan Group in Sacramento.

A DE 2523 must be filed for each claim received by the VP, including accepted disputed coverage referrals. In addition, when a claim is disallowed for any reason, a denial letter that includes appeal rights must be mailed to the claimant. A copy of the denial letter must be attached to the DE 2523. The only circumstance in which a DE 2523 is not required is when the period of disability is less than eight days.

The DE 2523 is available on the Internet at:

www.edd.ca.gov/diind.htm > Forms and Publications > DE 2523.

The Internet version of the DE 2523 cannot be e-mailed to SDI. It is a fill-in form only and must be faxed or mailed to SDI. For the Directory of Disability Insurance Field Offices see the fall General Release Letter, or call the VPG at (916) 653-6839.

Employers who wish to e-mail the form may request an electronic version from the VPG. This version can be e-mailed to either one of the following SDI field offices:

- San Jose DI Office at: vp2523sj@edd.ca.gov
- North Los Angeles DI Office at: vp2523la@edd.ca.gov

Reference: Title 22, CCR Section 3267-1

515 REQUEST FOR STATE PLAN AWARD

By law, each VP claimant must be paid a weekly rate at least equal to what he/she would have received under SDI. Since SDI uses all wages in this calculation, the SDI award may exceed the VP benefit calculation. A VP must request SDI award information for any claimant whose VP benefit is calculated at less than the SDI maximum.

To request SDI award information complete the *Report of Voluntary Plan Claim*, DE 2523. See Report of a Voluntary Plan Claim, DE 2523, Section 510 for more information on this form.

Item #10 asks, “Do you want award information?” Answer “yes” and enter the employer or insurer mailing address at the bottom of the page. This indicates to the SDI office that the SDI award is needed.

Answer ”no” if the VP intends to pay a claim at the maximum SDI weekly rate or higher.

This procedure should be only used as a guide to determine adequate VP payments, not as a calculation of the VP benefit.

If the SDI award is not received timely, contact the SDI office where the DE 2523 was sent.

520 REPORT OF A PAYMENT ADJUSTMENT ON THE DE 2523

If a close-out *Report of Voluntary Plan Claim*, DE 2523, has been submitted, and the period of disability is extended and/or supplemental benefits are paid, prepare a DE 2523 as follows:

- Complete items 1-10.
- Complete items 11-14, entering the total of all days and amounts paid, including those previously reported.
- Check the “adjustment” box in Item 15.
- Check any other applicable boxes.
- Send the DE 2523 to the same SDI office to which the original report(s) was sent.

Do not write a letter to SDI correcting the previously submitted report. See Correction of Errors on the DE 2523, Section 530, to report other errors on the DE 2523 that are not related to dates of payment.

530 CORRECTION OF ERRORS ON THE DE 2523

To correct any erroneous information submitted on a Report of Voluntary Plan Claim, DE 2523, such as social security account number, year of birth, mailing address, etc., write a letter to the SDI office to which the original DE 2523 was sent. Report the error and correction of each item that is to be changed from the initial report. Do not prepare a new DE 2523 to show corrections.

To report a payment adjustment, see Report of Payment Adjustment on the DE 2523, Section 520.

610 BENEFIT REDUCTION FOR RECEIPT OF WORKERS' COMPENSATION (WC) BENEFITS

Although a VP pays compensation for injury or illness which is not work-related, in some cases benefits are payable along with cash payments for industrial injury or illness. The CUIC allows for payment of SDI or VP benefits reduced by "other benefits." "Other benefits" are defined as temporary disability (TD), permanent disability (PD), or vocational rehabilitation maintenance allowance (VRMA) under a Workers' Compensation or employer's liability law.

Reference: CUIC Section 2629

If an individual is receiving WC benefits in an amount less than the calculated VP benefit, the VP must pay the difference between the WC and the VP benefit.

VRMA is payable to an individual who is entitled to vocational rehabilitation (VR) services and whose condition is determined to be permanent and stationary (P&S). A claimant receiving VRMA must also elect to receive PD advances to supplement VRMA up to the TD rate. If this combined amount is less than the VP benefit, the VP must pay the difference.

Employees who sustain an injury on the job should be instructed to file both a WC and a VP claim. If the amount of TD, PD, or VRMA equals or exceeds the VP benefit, the VP claim is disqualified (not eligible for payment) until the claimant returns to work and/or the "other benefits" cease.

620 CONFLICTING MEDICAL INFORMATION

WC benefits may cease when the insurance carrier or self-insured employer has medical documentation indicating that the claimant has recovered or is able to return to his/her regular or customary work. However, the claimant's treating physician may continue to certify that the claimant remains disabled. In the case of conflicting medical opinion, the VP may pay benefits at the rate described in the VP text or may deny benefits. If VP benefits are denied, a denial letter must be sent to the claimant advising of the right and method to appeal the decision.

630 PAYMENT OF VOLUNTARY PLAN BENEFITS UNDER LIEN

When information indicates that the disability resulted from a work-related illness or injury, a valid VP claim must be paid if one of the following exists:

- Current proof from the WC insurance carrier or self-insured employer that TD and/or VRMA benefits are not being paid; or

- Current proof showing the claimant is not entitled to TD or VRMA for the period in question; i.e., *A Notice of Final Check* or letter stopping TD or VRMA or denying those benefits; or

630 cont.

- A current *Application for Adjudication* substantiating the above, containing either a date-received stamp or a Workers' Compensation Appeals Board (WCAB) case number.

The VP should file a lien against the WC insurance carrier/self-insurer when benefits are paid on an undecided, work-related disability claim. If the WC insurer later concedes liability or is ruled liable for a period that was paid by the VP, the plan is entitled to reimbursement up to the WC rate. The required form for filing a lien may be obtained by contacting the WCAB at:

Workers' Compensation Appeals Board
455 Golden Gate Avenue
San Francisco, CA 94102
Phone (415) 703-1870

631 TIME LIMITATION OF DELAY IN PAYMENT

VP benefits may not be delayed except where the claimant is receiving, or the employer or insurer has agreed to commence, payment of "other" benefits, i.e., Workers' Compensation.

The VP is required to make an initial determination of the claimant's entitlement to WC benefits upon filing of the disability insurance claim. If the claim is deemed to be industrial, the employee must be informed that disability benefits will be paid pending receipt of WC benefits if the employer or insurer fails to agree to pay or allow WC benefits within 14 days of notification of industrial injury.

Reference: CUIC Section 2629.1

710 THE VOLUNTARY PLAN FUND

Employee contributions collected for VP coverage, and any income derived from this fund, are trust funds. The funds must clearly and accurately be accounted for by employers. When a VP requires contributions from the covered employees, the employer must set up a separate ledger account, which is credited with plan revenue. The ledger account must be charged with benefits and costs incurred in the operation of the plan. In addition, it must show all income to the plan, the payment of benefits, and allowable costs, separate and apart from all other operations of the employer.

VP trust funds must be maintained in a separate, specifically identifiable account in a financial institution, or they may be transmitted, including any interest or income, directly to the admitted disability insurer. No part of employee contributions or income may be diverted to the use or profit of the employer.

Any accumulated excess of the VP fund above the amount needed to pay benefits and including a reasonable reserve for future claims, assessments, and administration costs, must be used for the benefit of the employees covered by the plan.

Reference: Title 22, CCR Section 3260-1

711 AMOUNT OF CONTRIBUTIONS

An employer is authorized to deduct from a VP employee's wages an amount not to exceed the current State plan rate. The rate is established each year by the Director of the EDD and may not fluctuate more than 0.2 percent unless special circumstances exist.

Reference: CUIC Sections 984, 985 and 3260

The amounts deducted may be used only for the following purposes:

- Payment of benefits as provided by the plan,
- Reasonable expenses arising in the administration of self-insured plans, and
- Assessments levied by the EDD as provided for under the CUIC.

A plan may provide that:

- a lesser contribution amount than the State plan rate will be withheld, or
- the employer will make specified contributions on behalf of all or some covered employees, or
- the employer will assume all operating expenses of the VP.

712 APPROVED ADMINISTRATIVE EXPENSES

The EDD will approve the following expenses:

- Salary expenses for staff time devoted to VP activities;
- Medical examination fees that are paid to determine whether a claimant continues to be disabled;
- Security deposit costs and premiums;
- Stationery, postage, and other office supplies and equipment expenses required to administer the VP;
- Pro rata share of office space, equipment and operating expenses as they are incurred for VP operation;
- Fees paid to a third-party administrator; or
- Other expenses as approved by the EDD.

Reference: Title 22, CCR Section 3267-2

713 INTEREST AND DIVIDEND INCOME

Interest and dividend income earned by the VP trust fund must be credited to the fund and reported on the *Annual Report of Self-Insured Voluntary Plan Transactions*, DE 2568V. No part of employee contributions or income resulting from them may be diverted to the employer's own use or profit.

Reference: Title 22, CCR Section 3260-1 (a)

720 VOLUNTARY PLAN ASSESSMENT

Each voluntary plan pays an assessment to the EDD. It is calculated as 14 percent of the product obtained by multiplying the current rate of State contributions by the amount of the taxable wages paid to employees covered by the voluntary plan. This assessment may be charged against the plan fund or the employer may assume this expense.

The assessment pays for a portion of the following three functions:

1. The State cost for administering the VP program;

2. The cost for providing disability insurance benefits to individuals who may have contributed to a VP while working, but who file a claim for disability benefits with the State while unemployed; and

3. The worker refund program for excess employee contributions. (If a worker contributes more than the allowed maximum amount for disability insurance coverage because of working for more than one employer, the excess amount can be claimed as a refund on the California State Income Tax return.)

The VP assessment is computed on the *Quarterly Contribution Return*, DE 3D, on line K. The EDD mails this form quarterly to each VP employer to report wages, withholdings, and contributions. See Tax Reporting Under a Voluntary Plan, Section 770, for more information regarding this form.

Reference: CUIC Sections 1176 and 3252(b)

730 DISTRIBUTION OF EXCESS TRUST FUNDS

The amounts deducted from employees' wages, as contributions under a voluntary plan, are trust funds. No part of such employee contributions or income may be diverted to the employer's own use or profit.

Accumulated excess of employee contributions, over and above the amount needed for plan expenses and including a reasonable reserve, must be used to the benefit of the employee group covered by the plan. "Employee group" means all employees covered by the plan.

"Reasonable reserve" is not a specific dollar amount or percentage but rather the product of an evaluation of work force stability, anticipated employee contributions, claim history, and approved administrative expenses. Use of excess employee contributions should not deplete the fund or leave so small a balance that the fund will not be able to pay future claims, assessments, and administrative costs.

730 cont. The distribution of excess funds must first be approved by the EDD, and must be:

- commensurate with the contributions of the employee group, or classes within the group; or
- distributed in an otherwise fair and equitable manner.

Examples of approved methods of distribution are provided in Title 22, California Code of Regulations Section 3260-1.

With prior approval of the EDD, an employer may use any one, or a combination, of the following methods to dispose of accumulated excess:

1. Reduce or waive payroll deductions for a sufficient period to dispose of the excess.
2. Refund the excess to the employees covered by the voluntary plan in a fair and equitable manner as approved by the EDD.
3. Increase disability benefits under the plan, either temporarily or permanently.
4. Apply such excess to the purchase of other employee benefits for those employees covered by the VP such as group life, hospital, or medical insurance. **NOTE:** This method may be used only with the consent of a majority of the covered employees at the time the usage is proposed.

In order to use part of the excess to purchase other employee benefits, the employees must be formally notified of the proposed use and a majority must give informed written consent to the proposal. This consent must be secured 60 days prior to the commencement of the use of the funds. The consent forms must be retained for at least four years. The EDD will review the consent form prior to distribution of the excess trust funds to insure its clarity and accuracy.

Reference: Title 22, CCR Section 3260-1

When the EDD approves a proposal to distribute excess trust funds in an active plan, the VP may need to change the plan text on file. For example, in an employee-paid plan, the VP may propose to pay all employee contributions to the plan for one year. In such cases, the VP must:

- provide an amendment of the plan text to EDD, and
- provide a copy of the text amendment or a notice of the change to the covered employees.

Reference: Title 22, CCR section 3271-1

Any excess contributions remaining in the possession of an employer upon termination of a VP, which are not disposed of as described above, must be remitted to the EDD and deposited in the State Disability Fund.

740 ANNUAL REPORT OF SELF-INSURED VOLUNTARY PLAN TRANSACTIONS, DE 2568V

The VP employer or plan administrator is required to submit an *Annual Report Of Self-Insured Voluntary Plan, DE 2568V,* to the EDD. The annual DE 2568V must be submitted by February 15th of the following year. Failure to comply with this requirement may result in termination of the voluntary plan.

Reference: Title 22, CCR Section 3267-2

Form DE 2568V is available on the Internet at:

www.edd.ca.gov/diind.htm > Forms and Publications > DI Forms > DE 2568V.

The Internet version of the DE 2568V is a fill-in form only and cannot be e-mailed; it must be faxed or mailed to the VPG. Employers who prefer to e-mail the DE 2568V may request an electronic version from the VPG at (916) 653-6839.

The DE 2568V must be completed and submitted to the EDD by February 15th of each year. Specific instructions for completion are found on the reverse of the form. Employers who are unable to meet this deadline may request an extension for up to, but not exceeding, 45 days.

750 SEPARATE ACCOUNTING FOR RELATED PLANS ON THE DE 2568V

Although some employers may have related voluntary plans, each individual plan must complete a separate DE 2568V. Funds may not be transferred among plans to cover deficits. VP deficits covered by the employer may be in the form of a non-refundable contribution or a loan to the plan fund. The employer, through the security deposit, is responsible to guarantee payment of all obligations.

755 AMENDED ANNUAL REPORTS

After a report has been submitted, some or all of the information may require a change or correction. This change must be reported to the EDD by submitting an amended report. Any entry that is changed from the original report must be clearly noted as an amendment. Place a check mark in the “Amended” box located at the top of the form.

760 AUDIT OF VOLUNTARY PLANS

The EDD is authorized to audit the claim and accounting operations of all self-insured VPs to ensure compliance and proper administration of the plan. In addition, VP employers are required to make records available to EDD, according to regulations.

Reference: CUIC Section 3267

770 TAX REPORTING UNDER A VOLUNTARY PLAN

Employers who have EDD approval to operate a VP are exempt from remitting SDI contributions for those employees who have elected VP coverage. However, the employer must remit SDI contributions for those employees who choose SDI coverage. VP employers are required to complete a Quarterly Contribution Return, DE 3D, to report VP-covered wages and SDI-covered wages, and for the computation of the VP assessment. This is a different process from the one used by employers who have only SDI coverage for disability insurance.

Basic information regarding the purpose and due date of the EDD Tax Branch forms DE 3D, DE 6, and DE 7 is provided as follows:

- **DE 3D, Quarterly Contribution Return**

  Purpose: The DE 3D is used by VP employers to report Unemployment Insurance Tax, Employment Training Tax, and the total amount of California Personal Income Tax withheld, as well as the amount of SDI and VP assessment withheld.

  When Furnished: The EDD Tax Branch mails the DE 3D to VP employers each year in March, June, September, and December. This form can also be obtained from the nearest Employment Tax Customer Service Office.

  Due Dates: The DE 3D and any employment tax payments are due at the close of each calendar quarter, on April 30, July 31, October 31, and January 31. The return is delinquent if not received by the last day of the month following the close of each calendar quarter.

- **DE 6, Quarterly Wage and Withholding Report**

  Purpose: The DE 6 is used to report employees' quarterly subject wages, personal income tax wages, and personal income tax withheld. To report Voluntary Plan DI wages, place a check mark in Item B. Employers should use a separate DE 6 when reporting SDI wages.

  When Furnished: The EDD Tax Branch mails the DE 6 to employers each year in March, June, September, and December. This form can also be obtained from the nearest Employment Tax Customer Service Office or via the Internet at www.edd.ca.gov.

  Due Dates: The DE 6 is due on April 1, July 1, October 1, and January 1, and is delinquent if not received by the last day of the month following the close of each calendar quarter.

770 cont.

- **DE 7, Annual Reconciliation Statement**

  Purpose: Employers use the DE 7 annually to reconcile payments of payroll taxes. VP employers are required to file the DE 7 only if VP status had not been maintained for each of the four quarters in a specific tax year.

  When Furnished: The EDD Tax Branch mails the DE 7 to VP employers only if their VP status changed mid-year.

  Due Dates: The DE 7 is due on January 1, and is delinquent if not postmarked by January 31. This form must be filed if employment taxes were paid during the year.

Direct questions regarding tax-related forms to the EDD Employer Tax Information Center toll-free number at 1-888-745-3886.

780 SECURITY DEPOSIT MAINTENANCE

The VP employer must submit a security deposit as part of the approval process. The formula used to determine the minimum required amount is as follows:

"The following year estimated taxable wages **x** .5 **x** the current SDI contribution rate."

The minimum security deposit is $1,000. The amount of security in excess of the minimum required by the CUIC is determined by the number of employees covered, the size of the payroll, the class of risks, the financial standing of the employer, and any other relevant factors as determined by the EDD.

Reference: CUIC Section 3258

The deposit of security must be made in one of the following forms:

1. Bearer bonds issued or guaranteed by the United States or the State of California,

2. Cash,

3. Irrevocable letter of credit from a United States financial institution, or

4. Guarantee bond issued by an admitted surety insurer. The VPG will furnish the appropriate form, *Guarantee Bond*, DE 2544V, to the employer for execution.

Once approved by the EDD, the deposit is sent directly to the State Treasurer.

NOTE: Employers who wish to submit cash or bearer bonds must first complete and submit to the EDD an *Agreement Regarding Deposit of Securities*, DE 2545V. Deposits of cash or bearer bonds are **not** to be made until specific instructions are issued by the EDD.

Reference: Title 22, CCR Section 3258-1

781 RELEASE OF SECURITY DEPOSIT

The security is held by the State Treasurer for the duration of the voluntary plan and is released when all liability against the plan has been resolved, following withdrawal or termination of the voluntary plan. This will usually extend for a period of six calendar quarters (18 months) from the withdrawal or termination date. Earlier release may be requested for good cause and must be approved by the EDD.

A security may be released if a substitute is submitted for deposit. A replacement by means of cash, bearer bonds, or a guarantee bond backdated 18 months (or to a date that will not cause a lapse in coverage) will allow immediate release of the deposit being replaced. In all other cases, the State Treasurer will hold the initial deposit for 18 months after the replacement is accepted.

Reference: Title 22, CCR Section 3258-1(b)

782 REPLACEMENT OF SECURITY DEPOSIT

A VP requires a continuing security deposit to ensure payment of obligations. The employer is required to replace the original security if the surety cancels a guarantee bond or if a letter of credit is not renewed by the financial institution. Failure to maintain adequate security may be grounds for the EDD to terminate the VP.

783 SECURITY DEPOSIT REVIEW

The employer is responsible to annually review the amount of security in relation to the current work force, State contribution rate, and projected wages, and make necessary adjustments to increase or decrease the amount on deposit. The employer should submit the calculations and rationale for the proposed adjustment.

The EDD periodically reviews the adequacy of the security deposited with the State Treasurer and notifies the employer to adjust the security as appropriate. Submitting a requested increase to the security deposit is necessary to maintain continued plan approval. However, submitting a suggested decrease is optional.

784 METHODS OF DEPOSIT

Bearer Bonds

When the deposit is to be made by bearer bonds, an *Agreement and Undertaking With Deposit of Security*, DE 2545V, must be completed and submitted to the EDD for approval. The form must include a complete listing of securities to be deposited.

Upon EDD approval, the bonds are transmitted directly to the State Treasurer's Office. **Under no circumstances are Bearer Bonds to be sent to the EDD.** The employer should notify the State Treasurer's Office regarding redemption of interest coupons from these bonds.

784 cont. **Cash Deposit**

The same procedure as above is applied for a cash deposit. An *Agreement and Undertaking with Deposit of Securities*, DE 2545V, must be completed and submitted to the EDD. After specific written instructions from the EDD, the cash is to be deposited with the State Treasurer. The employer is responsible for safe delivery of the deposit to the State Treasurer's Office. No interest is paid on cash deposits.

Letter of Credit

The employer is responsible for providing a form the same as, or similar to, the Model Letter of Credit provided by the EDD to an issuing bank or savings institution. The letter of credit must be issued by and payable at any branch of the issuing bank or savings institution in the continental U.S., Alaska or Hawaii. The bank submits the letter of credit directly to the EDD, and upon approval, letters of credit are transmitted to the State Treasurer's Office for deposit. The State Treasurer will issue a receipt to the employer.

Guarantee Bonds

When the deposit is to be made by guarantee bond, a *Guarantee Bond*, DE 2544V, must be executed by the employer and an admitted surety company, then submitted directly to the EDD in duplicate. The EDD will forward the Guarantee Bond to the State Treasurer who will issue a receipt.

Complete and submit the DE 2544V as follows:

1. Verify the employer name, address, and VP number in the upper left box of the form.

2. Ensure that the effective date of the bond corresponds with the required effective date. For a new plan, this will be the plan effective date. A bond submitted to replace a canceled bond must be dated to coincide with the cancellation date. A replacement bond, at the employer's discretion, may carry any effective date, presuming the current bond has been in effect for at least one year.

3. Verify that the amount of the bond is the amount that is required.

4. An officer of the corporation must sign the bond for principal. That person's name and title should be clearly stated.

5. If the principal is a corporation, the corporate seal must be affixed.

6. A representative must sign for the surety company. If this representative is a designated Attorney-in-Fact, a Power of Attorney must be attached. If an officer of the surety signs, that person's title should appear under his or her name.

7. The surety must affix its corporate seal.

8. The original and one copy of the guarantee bond must be sent to the EDD for processing.

784 cont. Submitting Riders to Guarantee Bonds

A new guarantee bond is not needed to increase or decrease the amount of a guarantee bond. Changes can be accomplished by completing a rider to the guarantee bond in the following manner:

1. Make sure the rider correctly references the guarantee bond by bond number, effective date, and amount. This information may describe either the first-issued bond or the current status of the bond that resulted from one or more prior riders.

2. If the rider affects the amount of the bond, clearly state the new penal sum.

3. The beginning date of the requested change determines the effective date of the rider. For example, if the employer name changed on February 1, 2003, the effective date of the rider is February 1, 2003.

4. The rider must be either signed by an officer of the principal or sent to the EDD directly by the principal to verify knowledge of the change effected by the rider.

5. The rider must be signed on behalf of the surety company. A corporate officer or an Attorney-in-Fact may sign the rider. If it is signed by an Attorney-in-Fact, a Power of Attorney must be attached.

6. The original and one copy of the rider must be submitted to the EDD for processing.

Joint Principal Bonds

A guarantee bond may be issued for the purpose of securing a group of related plans. The proper format is to have the bond issued in a single principal name with the total amount required by all plans. A rider should name each of the joint principals and allocate the specific amount of liability for each.

Note: The cost of joint principal bonds should be allocated proportionately to all plans covered by the bond and should not be charged to one specific plan.

785 SUBSTITUTION OF SECURITY DEPOSIT

With prior approval from the EDD, an employer may make substitutions in the type of security deposit or the surety company writing a guarantee bond. The general procedures for deposit of each type of security will apply. When substitution is made with a guarantee bond, the prior deposit remains to secure obligation of claims beginning prior to the effective date of the substitution. The prior deposit is held for a maximum of six calendar quarters (18 months) from the effective date of the guarantee bond that was placed as substitute security.

The premium for cancelled or replaced bonds usually ceases with the cancellation of the guarantee bond. It is important to check with the surety to ensure that premiums for cancelled bonds are no longer being charged to the VP.

810 VOLUNTARY PLAN CHANGES MANDATED BY LAW

When legislation is enacted that affects voluntary plans, the EDD will notify employers of the required changes and establish a deadline by which they must submit a revised plan text or amendment to their current plan. Legislative changes usually take effect on January 1.

When an employer submits a revised plan for review, revised items must be clearly noted in the text or referenced in a cover letter. If legislation provides a change in the contribution rate or wage ceiling and an employer subsequently makes an employee contribution rate or ceiling change, an amendment to the plan text and/or statement of coverage is necessary.

Reference: CUIC Section 3271

820 VOLUNTARY PLAN CHANGES INITIATED BY THE EMPLOYER

When an employer chooses to amend its voluntary plan, it must furnish the EDD with the following:

- a copy of the amendment to the plan text,
- a copy of the Statement of Coverage (if one is used), and
- a copy of the notice which was distributed to the employees to inform them of the changes.

This notice to employees should specify the provisions of the amendment and inform them of their right to withdraw from the plan as of the effective date of the amendment. An employee may withdraw from the plan by giving written notice within 10 days of the effective date of the amendment.

The EDD will approve the amendment if the amended voluntary plan continues to meet the standards for voluntary plans that are outlined in the CUIC and the CCR, and one of the following is satisfied:

- Certification by the employer that a notice of the amendment has been distributed to the covered employees prior to the effective date. Employees must be given the right to withdraw from the plan on the effective date of the amendment by giving written notice to the employer within 10 days of the effective date; or
- Certification by the employer that a majority of the employees covered by the plan have consented to the amendment. The amendment cannot be effective prior to the date on which the majority of the covered employees gave their written consent; or

820 cont.

- Certification by the employer that all employees adversely affected by the amendment consented to the amendment. The amendment cannot be effective prior to the date on which all adversely affected employees gave their written consent.

Any amendments to a VP must be submitted to the EDD for approval no later than 45 days after the effective date of the amendment, along with the necessary certification as explained above. The Voluntary Plan Group is available to review any proposed amendment or materials prior to distribution to the employees to ensure compliance with the requirements.

If an amendment is applicable only to new or future employees, notification of such change should be transmitted to the EDD on or before the effective date of the amendment. The consent of the covered employees is not required in this case since the reduction in rights does not affect current employees.

Reference: CUIC Section 3271; Title 22, CCR Section 3271-1(b)

830 CONTRIBUTION INCREASE

Any increase in the amount of deductions from the wages of employees is prohibited except

- on an anniversary of the effective date of the plan,
- on the effective date of an increase in the taxable rate under the CUIC, Section 984, or
- on the effective date of an increase in the limitation on taxable wages under the CUIC, Section 985.

Reference: CUIC Sections 984, 985, and 3254(h)

840 SUCCESSOR VOLUNTARY PLANS

When all or part of a business covered by a VP is sold, the rules of successorship, contained in Section 3254.5 of the CUIC, apply. It is the responsibility of the seller to notify the EDD as soon as possible of the sale and provide the name, address, and phone number of a contact person for the new ownership. The EDD will then contact the successor employer to determine the intent to continue or discontinue the voluntary plan. The CUIC allows for continuation of the VP with an abbreviated application process.

840 cont. To maintain approval of the plan, the successor employer must submit:

- an *Application for Approval of Voluntary Plan for Successor*,
- a current copy of the plan document, and
- upon request, an adequate security deposit.

Under the successor plan, the new plan is entitled to any plan assets and the new owners assume responsibility for payment of claims in progress as well as all new claims.

These issues are decided between the predecessor and successor. The terms of the plan coverage remain as they were under the predecessor. However, the plan may be subsequently amended by following the amendment process. The application form and information about security deposits should be requested from the Voluntary Plan Group. The successor plan may be subsequently withdrawn on the original plan effective date, the successor plan effective date, or any date when legislation changes the State contribution rate, wage ceiling, or benefits. VP withdrawals must be requested in writing 30 days prior to the requested withdrawal date.

The successor employer may choose to withdraw the VP as of the date of the acquisition. In this case, the new owner has the responsibility of notifying the EDD of that decision. When a plan is withdrawn as the result of a successorship, the predecessor retains any plan funds, pays claims in progress, and pays any claim submitted with an effective date prior to plan withdrawal.

Funds remaining after all obligations are met must be disposed of in conformity with authorized regulations.

Reference: CUIC Sections 3254.5 and 3260

910 REQUEST FOR WITHDRAWAL OF THE VOLUNTARY PLAN

Once approved, a VP must remain in effect for at least one year. Thereafter, the employer may request withdrawal on the plan anniversary date or the date that a change in the State contribution rate or benefit schedule is enacted. The EDD must receive written notice no less than 30 days prior to the requested withdrawal date. The VP remains responsible for payment of all claims filed prior to the date of withdrawal. The VP is also responsible for claims that were submitted after the VP withdrawal where the disability began prior to the effective date of the withdrawal.

Unpaid liabilities of the VP will be recovered from the VP employer through an assessment and the security deposit.

Reference: CUIC Section 3254(g)

920 DEPARTMENT TERMINATION OF THE VOLUNTARY PLAN

The EDD may terminate a VP when terms or conditions of the plan have been violated. Some, but not all, causes for plan termination are:

- failure to pay benefits,
- failure to pay benefits promptly,
- failure to maintain an adequate security deposit,
- misuse of voluntary plan trust funds,
- failure to submit reports as required by EDD-issued regulations,
- failure to comply with CUIC and CCR provisions, and
- participation level falls below 50 percent of employees.

If the EDD identifies cause for terminating a VP, the EDD will send a *Notice of Intent to Terminate the Voluntary Plan* to the employer. The notice will specify an effective date of termination generally coinciding with the initiating event. A subsequent date may be selected by the EDD to protect the benefit rights of the employees.

The termination notice will inform the employer of the right to appeal the decision to the CUIAB within 10 days of the date of the notice. On the effective date of the termination of the VP by EDD, all money in the plan shall be remitted to the EDD and deposited into the Disability Fund. Wages become subject to SDI contributions withholding effective the date of termination. The payment of benefits and the transfer of money in the VP may not be delayed during an employer's appeal of the termination.

Reference: CUIC Sections 1126-1136, and 3262

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